



**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

UNITED STATES OF AMERICA

§

VS.

§

CASE NO. 1:07-CR-144

MICHAEL JASON GREEN

§

**FINDINGS OF FACT AND RECOMMENDATION ON PLEA OF TRUE
BEFORE THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(b) and the Local Rules for the District Court, Eastern District of Texas, the District Court referred this matter for hearing and the submission of findings of fact and a report and recommendation pursuant to 18 U.S.C. §§ 3401(i) and 3583(e). The United States alleges that the defendant, Michael Jason Green, violated conditions of supervised release imposed by United States District Judge Marcia A. Crone. The United States Probation Office filed its *First Amended Petition for Warrant or Summons for Offender Under Supervision* (doc. #57) requesting the revocation of the defendant's supervised release.

The Court conducted a hearing on August 2, 2017, in accordance with Federal Rules of Criminal Procedure 11, 32 and 32.1. The defendant was present and represented by counsel at the hearing. Having heard the evidence, this court factually finds that the defendant has violated

conditions of supervision and recommends that such violation warrants the revocation of his supervised release.

After conducting the proceeding in the form and manner prescribed by Federal Rule of Criminal Procedure 11, the Court finds:

- a. That the defendant, after consultation with counsel of record, has knowingly, freely and voluntarily consented to the administration of the plea of true in this cause by a United States Magistrate Judge subject to a final approval and imposition of sentence by the District Court.
- b. That the defendant is fully competent and capable of entering an informed plea, that the defendant is aware of the nature of the charges and the consequences of the plea, that his plea of true is a knowing and voluntary plea, not the result of force or threats, and that the plea is supported by an independent evidentiary basis in fact establishing each of the essential elements of the conduct.

STATEMENT OF REASONS

A. Procedural History

Judge Crone sentenced Mr. Green on October 21, 2008, after the defendant pled guilty to the offense of Felon in Possession of a Firearm, a Class C felony. The Court sentenced the defendant to 33 months imprisonment, to be followed by a three (3) year term of supervised release subject to the standard conditions of release, plus special conditions to include aftercare, mental health aftercare, no gang association, and a \$100 special assessment. On May 7, 2015, Michael Jason Green completed his period of imprisonment and began service of the supervision term.

B. Allegations in Petition

The United States Probation Office alleges that Mr. Green violated a mandatory condition of supervised release as follows:

The defendant shall not commit another federal, state or local crime.

Specifically, the petition alleges that on May 23, 2015, Michael Jason Green was arrested by Beaumont Police Department and charged with murder and two counts of aggravated assault with a deadly weapon - firearm.

C. Evidence presented at Hearing:

At the hearing, the Government offered evidence in support of the above-stated allegations. Specifically, the Government submitted a copy of the state court judgment filed in cause number 15-22760 in the Criminal District Court of Jefferson County, Texas, showing that Mr. Green pled guilty and was convicted on the charge of Murder, First Degree. Judge John B. Stevens, Jr., entered the judgment on May 31, 2016, and sentenced Mr. Green to thirty five (35) years in the Institutional Division of Texas Department of Criminal Justice (TDCJ).

Defendant, Michael Jason Green, offered a plea of true to the allegations. Specifically, he agreed with the evidence summarized above and pled true to the allegation that he committed a new state crime in violation of his supervision conditions.

D. Sentencing Guidelines; Findings and Recommended Disposition

The allegations, supporting evidence and plea of true warrant revocation of supervised release. *See 18 U.S.C. § 3583(h).* The Court factually finds by a preponderance of the evidence that the defendant violated a mandatory condition of his supervision by committing a new state

crime. This conduct constitutes a Grade A violation under U.S.S.G. § 7B1.3(a)(2). Upon finding a Grade A violation, the Court shall revoke the defendant's supervised release. *See* U.S.S.G. § 7B1.3(a)(1)¹.

Based upon the Defendant's criminal history category of V and the Grade A violation, the sentencing guidelines suggest a sentence of imprisonment for a period ranging from 30 to 37 months. *See* U.S.S.G. § 7B1.4(a). However, because the original offense of conviction was a Class C felony, the statutory maximum imprisonment term upon revocation is two (2) years. *See* 18 U.S.C. § 3583(e)(3). This statutory provision accordingly caps the maximum sentence for the revocation at two (2) years, despite the higher range of imprisonment recommended by the Guidelines.

The Fifth Circuit states that Chapter 7 of the Sentencing Guidelines regarding the revocation of supervised release is advisory only. *See United States v. Cade*, 279 F.3d 265, 271 n.2 (5th Cir. 2002) (citing *United States v. Montez*, 952 F.2d 854, 859 (5th Cir. 1992); *United States v. Headrick*, 963 F.2d 777, 782 (5th Cir. 1992)). Because Chapter 7 was promulgated as an advisory policy statement and there are no applicable guidelines for sentencing after revocation of supervised release², the Court may impose a greater or lesser sentence upon revocation. *United States v. Gonzalez*, 250 F.3d 923, 925 (5th Cir. 2001). Further, a sentence imposed for revocation will be

¹*See also* 18 U.S.C. § 3583(g)(2)(providing for mandatory revocation when a defendant possesses a firearm in violation of Federal law).

² *See U.S. Sentencing Guidelines Manual*, Ch. 7, pt. A, cmt. 1 ("At this time, the Commission has chosen to promulgate policy statements only.")

upheld unless it is in violation of the law or plainly unreasonable. *Id.* See also *United States v. Pena*, 125 F.3d 285, 288 (5th Cir. 1997) (citations omitted).

Here, the evidence and the defendant's own admission supports a finding that the defendant violated his supervision conditions. Mr. Green pled true, agreed with the Court's recommended sentence for that violation, and waived his right to allocute before the District Court.

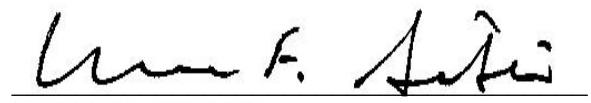
Accordingly, based upon the defendant's plea of true, the agreement of the parties, and the evidence presented in this case, it is the recommendation of the undersigned United States Magistrate Judge that the District Court accept the plea of true and revoke Defendant's supervised release. The undersigned further recommends that the District Court order Defendant to serve a term of **24 months** imprisonment for the revocation, with no additional term of supervised release to follow.

OBJECTIONS

Objections must be: (1) specific, (2) in writing, and (3) served and filed within fourteen (14) days after being served with a copy of this report. See 28 U.S.C. § 636(b)(1). A party's failure to object bars that party from: (1) entitlement to *de novo* review by a district judge of proposed findings and recommendations, *see Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988), and (2) appellate review, except on grounds of plain error of unobjected-to factual findings and legal conclusions accepted by the district court, *see Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc). The constitutional safeguards afforded by Congress and the courts require that, when a party takes advantage of his right to object to a magistrate's findings or recommendation, a district judge must exercise its nondelegable authority by considering the actual

evidence and not merely by reviewing and blindly adopting the magistrate judge's report and recommendation. *See Hernandez v. Estelle*, 711 F.2d 619, 620 (5th Cir. 1983); *United States v. Elsoffer*, 644 F.2d 357, 359 (5th Cir. 1981) (per curiam).

SIGNED this the 2nd day of August, 2017.



KEITH F. GIBLIN
UNITED STATES MAGISTRATE JUDGE